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4      TOUSLEY BRAIN STEPHENS PLLC  
5      Kim D. Stephens, P.S., *Pro Hac Vice*  
5      Nancy A. Pacharzina, *Pro Hac Vice*  
6      1700 Seventh Avenue, Suite 2200  
6      Seattle, Washington 98101  
7      206.682.5600

7      *Attorneys for Plaintiffs Mary Grace Simpao, Christina Naputi and Janet Cruz*  
8  
9  
10

FILED  
DISTRICT COURT OF GUAM

JUN 11 2007

  
MARY L.M. MORAN  
CLERK OF COURT

11      DISTRICT COURT OF GUAM  
12      TERRITORY OF GUAM

13      JULIE BABAUTA SANTOS, *et al.*,

CASE NO. CV04-00006

14      Petitioners,

DECLARATION OF KIM D. STEPHENS  
IN SUPPORT OF SIMPAO PLAINTIFFS'  
APPLICATION FOR ATTORNEYS' FEES  
AND COSTS

15      v.

16      FELIX P. CAMACHO, *et al.*,

17      Respondents,

19      CHARMAINE R. TORRES, *et al.*,

CASE NO. CV04-00038

21      Plaintiffs,

22      v.

23      GOVERNMENT OF GUAM, *et al.*,

24      Defendant.

25  
26      ORIGINAL

DECLARATION OF KIM D. STEPHENS IN SUPPORT OF  
SIMPAO PLAINTIFFS' APPLICATION FOR ATTORNEYS'  
FEES AND COSTS - 1

4162/001/2007 Case 1:04-cv-00006 Document 418 Filed 06/11/2007 Page 1 of 10

TOUSLEY BRAIN STEPHENS PLLC  
1700 Seventh Avenue, Suite 2200  
Seattle, Washington 98101  
206.682.5600 FAX 206.682.2804

1 MARY GRACE SIMPAO, *et al.*,

CASE NO. CV04-00049

2 Plaintiffs,

3 v.

4 GOVERNMENT OF GUAM,

5 Defendant.

6

7 I, Kim D. Stephens, declare as follows:

8 1. I am the managing member of Tousley Brain Stephens PLLC, counsel for class  
9 representatives Simpao, Naputi and Cruz. I submit this Declaration in support of my firm's and  
10 Plaintiffs' application for an award of attorneys' fees for services rendered in the  
11 above-captioned matter, and for reimbursement of expenses reasonably incurred in connection  
12 with this litigation.

13 2. Tousley Brain Stephens is a Seattle, Washington law firm with a national  
14 litigation practice focused on complex civil and commercial litigation emphasizing securities,  
15 financial, environmental, product liability, consumer, and real estate matters.

16 3. I am the lead attorney from Tousley Brain Stephens in this case, and I am one of  
17 the firm's senior litigators. I received my law degree, with honors, in 1981 from the University  
18 of Washington School of Law. I served as a judicial extern clerk for the Honorable Eugene A.  
19 Wright, Ninth Circuit Court of Appeals. After that clerkship, I joined Haggard, Tousley &  
20 Brain, predecessor to Tousley Brain Stephens. I concentrate my practice in complex  
21 commercial litigation with special emphasis on consumer, securities, financial, construction  
22 products, and business law matters. I have been appointed special attorney general to handle  
23 cases for the state of Washington, lead counsel to manage both state and federal class actions,  
24 and have extensive experience litigating multiple plaintiff and class action cases involving tax,  
25 securities fraud, environmental issues, products liability, and consumer fraud issues in state and  
26 federal courts.

DECLARATION OF KIM D. STEPHENS IN SUPPORT OF  
SIMPAO PLAINTIFFS' APPLICATION FOR ATTORNEYS'  
FEES AND COSTS - 2

4162/001/20620 Case 1:04-cv-00006 Document 418 Filed 06/11/2007 Page 2 of 10

TOUSLEY BRAIN STEPHENS PLLC  
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(206) 682-5100 FAX (206) 682-2100

1       4. I have been appointed lead and co-lead class counsel by numerous state and  
2 federal courts. For example, I acted as co-lead class counsel for Tousley Brain Stephens in the  
3 *Richison v. American Cemwood Corp.* litigation related to defective shingles which created a  
4 guaranteed \$105 million settlement fund in the first phase of the litigation. The second phase  
5 of the litigation against Cemwood's insurers created an additional \$83 million settlement fund  
6 in 2003. I acted as co-lead class counsel for Tousley Brain Stephens in the *Behr Wood Sealants*  
7 settlement, which in 2003 created a settlement fund of up to \$107.5 million plus attorneys' fees  
8 to compensate homeowners on a claims-made basis. I acted as co-lead class counsel for  
9 Tousley Brain Stephens in *Delay et al. v. Hurd Millwork Co.*, representing a western states  
10 class of individuals that purchased windows allegedly filled with inert gas which we  
11 successfully settled. I acted as lead class counsel for Tousley Brain Stephens in *Barrett v.*  
12 *PABCO*, a national roofing shingles products liability case which was settled on an unlimited  
13 claims-made basis and approved in King County Superior Court in 2006. The settlement more  
14 than doubled the value of compensation available to homeowners under a Washington State  
15 Attorney General Consent decree, and opened claims to every qualified homeowner in the  
16 nation, including those who were not the original purchasers. I acted as lead class counsel for  
17 Tousley Brain Stephens in *Johnson v. Amgen Boulder, Inc., et al.*, where I was appointed to  
18 represent a national securities fraud class that invested approximately \$50 million to fund the  
19 development of a genetically engineered molecule with the world's largest biotechnology  
20 company. That case settled for payments totaling up to \$82 million. I acted as lead class  
21 counsel for Tousley Brain Stephens in *Wolf et al. v. Asiamerica et al.*, a securities fraud action  
22 against an international leveraged buy-out corporation that settled for approximately 120% of  
23 the class' investment, plus attorneys' fees and costs. I acted as lead class counsel for Tousley  
24 Brain Stephens in *Nelson v. Appleway Chevrolet, Inc., et al.*, in which the Washington State  
25 Supreme Court held AutoNation's practice of charging consumers B&O tax to be illegal.  
26

DECLARATION OF KIM D. STEPHENS IN SUPPORT OF  
SIMPAO PLAINTIFFS' APPLICATION FOR ATTORNEYS'  
FEES AND COSTS

4462/001/2002427 Case 1:04-cv-00006 Document 418 Filed 06/11/07 Page 8 of 10

TOUSLEY BRAIN STEPHENS PLLC  
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425.466.2500 / 800.255.0129

1 Consumers throughout Washington State will receive refunds for 100% of their tax payments  
2 and credits of 110% of their tax payments in certain transactions.

3       5.      Tousley Brain Stephens and I have been appointed co-lead counsel in numerous  
4 other class cases. For example, Tousley Brain Stephens was appointed co-lead counsel in the  
5 *In re Louisiana-Pacific Inner Seal Siding* class action which, with initial funding of  
6 \$275 million, was one of the largest product liability class action settlements in the United  
7 States. In November 1998, this settlement was augmented by additional commitments of up to  
8 \$500 million. Tousley Brain Stephens was also co-lead counsel in the product liability class  
9 action against Weyerhaeuser Company in San Francisco Superior Court, *Williams et al. v.*  
10 *Weyerhaeuser Company*, which settled on a “claims made” basis which Weyerhaeuser values  
11 at approximately \$85 million. Currently, Tousley Brain Stephens serves as lead or co-lead  
12 counsel in many other consumer class fraud cases including *Odom v. Microsoft et al.* in King  
13 County Superior Court; *Trimble et al. v. Holmes Harbor Sewer District et al.*, an Island County  
14 Superior Court case which certified for trial a class of over 300 investors misled by an illegal  
15 \$20 million bond issue; and a wage and hour employment case in *Barnett et al. v. Wal-Mart*  
16 *Stores, Inc.*, a King County Superior Court case, among many others.

17       6.      Nancy Pacharzina recently became a member of Tousley Brain Stephens. She  
18 was an associate for the firm during the majority of the time she worked on this case. She  
19 concentrates her practice on complex civil litigation involving environmental, consumer  
20 protection, and discrimination issues. She graduated *Order of the Coif* from the University of  
21 Washington School of Law and served as a clerk for the Honorable Richard M. Bilby of the  
22 U.S. District Court for the District of Arizona. An environmental engineer prior to graduating  
23 from the University of Washington Law School, Ms. Pacharzina has extensive experience  
24 litigating class actions and plays a key role in the firm’s class action practice. She represented  
25 clients in a wide variety of class actions, including wage and hour, securities fraud, product  
26 defect, and consumer fraud issues. Ms. Pacharzina has successfully briefed and argued cases

DECLARATION OF KIM D. STEPHENS IN SUPPORT OF  
SIMPAO PLAINTIFFS' APPLICATION FOR ATTORNEYS'  
FEES AND COSTS - 4

4162/001/266262 Case 1:04-cv-00006 Document 418 Filed 06/11/2007 Page 4 of 10

TOUSLEY BRAIN STEPHENS PLLC  
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1 before state and federal courts, the Washington State Court of Appeals, and Washington State  
2 Supreme Court.

3       7.     Tousley Brain Stephens has been involved in the investigation, prosecution, and  
4 settlement of this litigation from its inception to the present. As co-lead counsel, we played a  
5 key role in the case, performing substantial work on behalf of Plaintiffs and the Class. All of  
6 the services performed by our firm were reasonably necessary. Our work included the  
7 following:

- 8       • Objecting and moving to intervene in the original proposed *Santos* settlement;
- 9       • Drafting pleadings and filing a separate action when the motion to intervene in *Santos*  
10      was denied;
- 11      • Drafting trial court motions and other court filings, and arguing those motions before  
12      the court, including successfully defending against the Government of Guam's motion  
13      to dismiss, and successfully bringing a partial summary judgment motion;
- 14      • Moving for class certification;
- 15      • Briefing the potential problems with the proposed class settlement filed both at the  
16      Order of the Court and on our own initiative;
- 17      • Interviewing fact witnesses;
- 18      • Retaining experts to analyze the potential liability of the Government of Guam;
- 19      • Researching and analyzing Guam law and legislative history relating to the Earned  
20      Income Tax Credit and other issues (jurisdiction, etc.);
- 21      • Analyzing and formulating strategy to meet the Government of Guam's challenges;
- 22      • Gathering, obtaining and analyzing evidence to prove losses suffered by the Class;
- 23      • Participating in hearings in Guam, traveling from Seattle, Washington in order to be  
24      present;
- 25      • Participating in mediation held in Guam, traveling from Seattle, Washington in order to  
26      be present;

DECLARATION OF KIM D. STEPHENS IN SUPPORT OF  
SIMPAO PLAINTIFFS' APPLICATION FOR ATTORNEYS'  
FEES AND COSTS - 5  
4162/001/262

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1        • Winning motions that overcame the Government of Guam's jurisdictional challenges  
2        and obtaining a ruling that Guam is required to pay the Earned Income Tax Credit  
3        (hereinafter referred to as "EITC"), thereby establishing two fundamental issues in a  
4        manner favorable to the entire class;  
5        • Communicating with officials in the Government of Guam to determine the status of  
6        funds available to pay EITC and the history of payment of the EITC; and  
7        • Assembling research and developing evidence for motions and eventual trial on the  
8        merits.

9                8. All attorneys, paralegals and document clerks at Tousley Brain Stephens are  
10      instructed to maintain contemporaneous time records reflecting the time spent on this and other  
11      matters. As of June 5, 2007, my firm had devoted a total of 1193 professional hours to the  
12      prosecution of this case, comprised of 1099 hours of services provided by attorneys, 44 hours  
13      of services provided by paralegals, and 50 hours of services provided by document clerks. The  
14      names, current hourly rates, and hours incurred by each of the attorneys (including partners and  
15      associates), paralegals, and document clerks, are attached hereto as Exhibit A. As shown in  
16      Exhibit A, this firm's lodestar as of June 5, 2007 is \$602,648. Complete detailed time records  
17      for attorneys, paralegals and document clerks are available for *in camera* review upon the  
18      Court's request.

19                9. There has been no unnecessary duplication of services for which my firm now  
20      seeks compensation. In those instances in which two or more attorneys participated in any  
21      matter, this joint participation was necessary because of the complexity of the problems  
22      involved and the time constraints that existed. I personally coordinated work flow for this case  
23      to ensure that key tasks were identified and accomplished timely and efficiently. I have written  
24      inefficient time off and not included it within this fee request.

25                10. As of June 5, 2007, my firm had expended a total of \$22,129.38 in unreimbursed  
26      costs. These costs, which were reasonably and necessarily incurred in connection with the

prosecution of this litigation, are summarized on Exhibit B attached hereto. The costs were incurred solely in connection with this case and are reflected on the books and records of my firm, which we maintain in the course of business. Our books and records are prepared from expense vouchers and contemporaneous check requests. They are an accurate record of the expenses incurred in this case.

11. Tousley Brain Stephens represented the *Simpao* plaintiffs on a contingent basis and advanced costs on their behalf. The only compensation we will receive for our legal work on this case and the expenses we incurred on behalf of the *Simpao* plaintiffs will be the amount awarded by the Court.

12. We are an 18-lawyer firm with an hourly and contingent fee practice. The demands of this case on our limited resources have periodically precluded us from taking on other cases.

I declare under penalty of perjury under the laws of the United States and the Territory of Guam that the foregoing is true and correct. 

Executed this 1 day of June 2007, at Seattle, Washington.

KIM D. STEPHENS

TOUSLEY BRAIN STEPHENS PLLC  
1700 Seventh Avenue, Suite 2200  
Seattle, Washington 98101

**Naputi v. Guam**

**LODESTAR REPORT for Tousley Brain Stephens PLLC**

Inception through June 5, 2007

NAME	LEVEL	TOTAL HOURS	HOURLY RATE	TOTAL FEES
Kim D. Stephens	Owner/member	256.8	\$750	\$192,600.00
David D. Hoff	Owner/member	16.0	\$750	\$12,000.00
Romney R. Brain	Owner/member	2.5	\$565	\$1,412.50
Nancy A. Pacharzina	Owner/member	816.2	\$465	\$379,533.00
	<b>Subtotal</b>	<b>1091.30</b>		<b>\$585,545.50</b>
Michael J. Estok	Associate	7.8	\$310	\$2,418.00
	<b>Subtotal</b>	<b>7.8</b>		<b>\$2,418.00</b>
Amy E. Stanton	Paralegal	7.5	\$195	\$1,462.50
Carol D. Bonifaci	Paralegal	20.1	\$255	\$5,125.50
Gayle L. Neligan	Paralegal	16.5	\$170	\$2,805.00
	<b>Subtotal</b>	<b>44.10</b>		<b>\$9,393.00</b>
Eden B. Nordby	Document Clerk	17.4	\$105	\$1,827.00
Megan Koekemoer	Document Clerk	33.0	\$105	\$3,465.00
	<b>Subtotal</b>	<b>50.40</b>		<b>\$5,292.00</b>
	<b>TOTAL</b>	<b>1193.80</b>		<b>\$602,648.50</b>

**UNREIMBURSED EXPENSES FOR TOUSLEY BRAIN STEPHENS PLLC**

Inception through June 5, 2007

Reproductions	\$2,458.32
Postage	4.05
Filing Fee	200.00
Messenger	62.73
Long Distance Telephone	612.71
Computer Research	4,574.68
Travel Expense	14,059.89
CD/DVD	15.00
Miscellaneous/Advances	127.00
Miscellaneous/Expense	15.00
<b>TOTAL</b>	<b>\$22,129.38</b>

**Exhibit B**

## CERTIFICATE OF SERVICE

I, JAMES L. CANTO II, certify that I caused a copy of the foregoing document here filed to be served on the following individuals or entities on June 11, 2007, via hand delivery at the following addresses:

Counsel for Petitioner  
Charmaine Torres  
Peter C. Perez, Esq.  
Lujan, Aguigui & Perez, LLP  
Pacific News Bldg., Ste. 300  
238 Archbishop Flores St.  
Hagatna, Guam 96910

Counsel for Respondent  
Felix P. Camacho  
Daniel M. Benjamin, Esq.  
Calvo & Clark, LLP  
655 S. Marine Corps Drive, Ste. 202  
Tamuning, Guam 96913

Counsel for Respondent  
Felix P. Camacho  
Shannon Taitano, Esq.  
Office of the Governor of Guam  
Governor's Complex  
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Adelup, Guam 96910

Counsel for Respondents  
Artemio Ilagan and Lourdes Perez  
Rawlen M.T. Mantanona, Esq.  
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825 South Marine Corps Drive  
Tamuning, Guam 96913

Counsel for Petitioner  
Julie Babauta Santos  
Michael F. Phillips, Esq.  
Phillips & Bordallo, P.C.  
410 West O'Brien Drive  
Hagatna, Guam 96910

Respectfully submitted this JUNE 11, 2007

SHIMIZU CANTO & FISHER  
TOUSLEY BRAIN STEPHENS PLLC



James L. Canto II  
Attorneys for Plaintiffs